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ABSTRACT

This paper analyzes the significance of a court's action on educational improvement. During its 2001-02 term, the United States Supreme Court heard arguments in and decided the "Owasso Independent School District Number 1-011 v. Falvo" case. This case involved whether it is an acceptable practice for teachers to allow students to grade one another's work in the classroom or whether such practice violated the 1974 Family Educational Rights and Privacy Act (FERPA), a law that provides for the confidentiality of student records. To build context, the paper presents the history of student assessment, discusses the effect of standards on educational practice and policy, and describes the difference between student grading and student assessment. The "Owasso" case is then examined. The "alternative" decision is also discussed in consideration of how such a decision, which can impact grading/assessment practices, might enlighten future policy decisions. Implications of the "Owasso" decision are discussed, including the fact that peer grading can legally continue because it is not in violation of FERPA. The Supreme Court also maintains its stance in staying out of issues of teaching and learning, so as to maintain the space necessary for school teachers and administrators to accomplish their jobs successfully. (Contains 25 references.) (RT)

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The Court: A tool for school improvement?

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The Court: A tool for school improvement?

During its 2001-2002 term, the United States Supreme Court heard arguments in and decided a case entitled Owasso Independent School District Number I-011 v. Falvo. The question in this case centers around whether it is an acceptable practice for teachers to allow students to grade one another's work in the classroom or whether such practice violates the 1974 Family Educational Rights and Privacy Act, a law which provides for the confidentiality of student records. As the term evolved, school administrators looked to the decision with anticipation for, depending upon the Court's perspective, the case might provide school administrators with a new tool by which they could encourage reluctant teachers to abandon certain methods of student assessment and replace those with ones that may provide more useful and powerful feedback regarding what students know and are able to do. In this sense, the Owasso case held the potential to become another tool for administrators to use in order to pursue the ongoing quest of improving schools for the benefit of ever-greater numbers of students. While school leaders focus on using positive tools to create an environment for ongoing change, such as shared decision-making structures and data-driven reflection, the power of a Supreme Court decision might serve as another influential tool that can cause changes to improve classroom practices. In order to understand the potential importance of this case on classrooms and schools, one must understand the importance of assessment in schools today.

Over the past decade, educators at all levels have begun to understand that assessment ought to mean a great deal more than simply giving grades to students. Rather, "assessment should be designed to provide ongoing, useful feedback, to both students and teachers, on what students have learned" (Jackson & Davis, 2000, p. 54). Whether assessments achieve the aforementioned goal of providing "useful feedback…on what students have learned" is probably doubtful. Most student assessments are local assessments, given at the classroom, school, or district level. During this era of standards-based reform, students and teachers have also become familiar with state assessments. These are generally standardized tests aligned with the learning standards of a particular state (Odden & Picus, 2000). Then, there are national assessments, such as the National Assessment of Educational Progress (NAEP), and international assessments, like the Third International Math and Science Study (TIMSS). Regardless of the level at which the assessment is given, who designed it, or how it is administered, student assessments measure the knowledge or ability of students to know and explain broad conceptual and specific content knowledge, to demonstrate competence in the completion of specific skills such as those needed for writing and mathematics, and/or to evaluate student performance in the affective domains that are necessary for success in school and the workplace. For educators, particularly school principals and classroom teachers, a worthwhile assessment of any element of schooling, created by any level of governance, provides information as to what a student knows and is able to do.

The recent emphasis on student assessment is a direct result of the policy era in which American public education currently exists, the era of standards-based reform. Standards-based reform has its roots with the 1983 publication of A Nation at Risk, the U.S. Department of Education report that decried the state of learning in American schools and that suggested that U.S. schools were leading to national disaster. In response to this report, educators, government officials, and business leaders sought new methods of ensuring high quality public education. With the beginning of the 1990's, these efforts had coalesced into the standards movement, whereby state

governments issue a set of content and skill standards that outline what students are expected to know and be able to do as a result of their schooling. Along with the creation of the standards, policymakers have also determined that it is necessary to evaluate student and school performance on the standards and provide accountability measures to ensure that all schools meet these standards. This movement has thrust student assessment into the spotlight of curriculum and instruction topics. Thus, backwards design has emerged as the umbrella best practice under which other new ideas about assessment must fit (Wiggins & McTighe, 1998).

Backwards design refers to a planning process that teachers use to prepare for instructional units. The process begins by identifying what students ought to know and be able to do at the end of the instructional unit. These objectives should be based on standards, including both the standards of the state in which the school resides and standards that have been drafted by professional organizations. In other words, the standards documents ought to be used during the planning process itself. Once the standards that will be covered in a unit have been identified, the next step is to determine the best way to measure whether students have attained the standard. A high quality assessment plan for an upcoming unit will include both formative assessments, or how the teacher will assess students during the unit in order to check their progress, and summative assessments, which fall at the end of the unit of study and determine whether or not a student has mastered the standard. Of course, even these summative assessments are also formative and diagnostic in the hands of teachers whose classrooms reflect the range of instructional best practices. Now, with the standards clearly identified and the assessments designed, a teacher would begin to devote time and energy to creating and implementing instructional activities that help students understand, be able to do, and apply what is being covered during the unit. A classroom that is highly effective for all learners will be most effective when it applies the systematic process of backwards design. Of course, a comprehensive planning process does not alone make a successful classroom, but without such planning, it is impossible to create a classroom that truly exhibits a balanced approach to instruction and assessment that engages all types of students in their learning and that allows them to demonstrate their knowledge and skills in diverse settings.

Today, it is generally accepted in the educational community that students learn in a variety of ways (Gardner, 1991; Bruner, 1996; Caine & Caine, 1997; Eisner, 1998). While teachers have become more and more adept at providing instructional activities that allow students to acquire new knowledge in the manner which best suits each child's learning style, it remains common to simply assess students' acquisition of this knowledge with a traditional pencil and paper test, like a multiple choice test. A balanced approach to assessment, and one that complements the backwards design framework, requires teachers to ask themselves what is the most valid and meaningful way to determine whether or not each student has mastered each standard (Stiggins, 1997). This question ought to be asked for each standard in turn. If students are expected to recall basic facts, a pencil and paper assessment with multiple choice and short answer questions may be appropriate. If students have been taught a new skill, they ought to be asked to demonstrate their ability to perform that skill. Their performance can then be assessed with a rubric, which describes what type of performance meets the standard, what type of performance does not meet the standard, and what type of performance exceeds the standard. If one is teaching students to learn a process, such as the steps of the scientific method or how students work as members of the group, teachers might

complete a checklist for each student or ask the students to assess their own performance related to the standard. A classroom in which assessment is balanced will use a variety of tools, ranging from those that require reading and writing to those that require listening, speaking, drawing, moving, and doing. Regardless of grade level or content, best practices in classroom assessment dictate that assessments are matched to the standard that is to be measured.

The vast majority of student assessment takes place at the classroom level, and to that end, it is imperative that teachers view grading as simply the collection of evidence represented by the various assessments that have been completed (O'Connor, 2001). In other words, in classrooms that rely upon best practices in student assessment, teachers must collect evidence to support a grade throughout a term rather than simply enter and average numbers in a grade book. The use of portfolios can provide an organizational tool for such a collection of evidence (Davies, 2000). Additionally, student portfolios serve as the foundation for a classroom in which students regularly self-assess. Self-assessment is critically important if students are to become lifelong learners because through self-assessment students "can realistically and constructively judge the merits and shortcomings of their own efforts and productions" (Preece, 1995, p. 30). When students take responsibility for the assessment of their own work, they also take responsibility for their learning. This is a powerful step towards becoming a lifelong learner.

High quality student assessment incorporates a diverse and comprehensive mix of activities that provide teachers, students, parents, and other stakeholders important data about student performance. These activities include state and national assessments, traditional classroom assessments like essays and multiple choice tests, as well as student self-assessments, peer assessments, checklists, interviews, and performance-based assessments. As with any major transformation of traditional notions of teaching and learning, educational leaders face the challenge of providing an environment in which teachers can learn, understand, believe in, and implement a more comprehensive paradigm of student assessment. Creative educational leaders look for strategies that they might use as they differentiate their leadership style based on the needs of individual teachers. The United States Supreme Court's decision in Owasso Independent School District No. I-011 v. Falvo, held the potential to become another tool for school leaders to use in helping teachers shift from the use of traditional assessments to a more comprehensive approach to assessment.

The Owasso Case

In 1974, Congress passed the Family Educational Rights and Privacy Act, more commonly known as FERPA. FERPA provides for the confidentiality of student records in schools receiving federal funding, including student grades. In this case, a parent, Kristja Falvo called into question the practice of allowing students to grade one another's work. All three of her children had experienced this in classrooms in the Owasso Independent School District No. I-011, and Falvo argued that this practice was embarrassing to her children. Falvo asked the school district to disallow the practice, but her request was denied. The case, then, began its journey through the judicial system, where it would eventually wind up in the U.S. Supreme Court. At question for the Court in this case "is whether peer-graded classroom work and assignments are education records" (Owasso ISD No. I-011 v. Falvo, 2002, p. 2). The question at issue in the case hinges on whether the peer-graded work is "maintained" by the school or teacher (Owasso ISD No. I-011 v. Falvo, 2002, p. 4). On this point, the Owasso School District argued that actual student work did not qualify as an education record, though "final course grades, student grade point averages,

standardized test scores, attendance records, counseling records, and records of disciplinary actions" all ought to be considered education records (Owasso ISD No. I-011 v. Falvo, 2002, p. 5). The Court of Appeals, which had found in favor of Falvo, viewed educational records differently. The Court of Appeals determined that teacher grade books are educational records, and while grades are not "maintained" until they are recorded in the grade book, the Court of Appeals "reasoned…that if Congress forbids teachers to disclose students' grades once written in a grade book, it makes no sense to permit the disclosure immediately beforehand" (Owasso ISD No. I-011 v. Falvo, 2002, p. 5). The Supreme Court disagreed with this logic.

Rather than choose to further define FERPA, the Supreme Court chose to continue a tradition of the federal courts that treads very carefully when making decisions that may impact public schools as it relates to teaching and learning in the classroom. Though this point will be discussed in greater detail later in this paper, the Court writes that "we would hesitate before interpreting the statute to effect such a substantial change in the balance of federalism unless that is the manifest purpose of the legislation" (Owasso ISD No. I-011 v. Falvo, 2002, p. 6). Using this as its guiding principle, the Court further states,

> "Correcting a classmate's work can be as much a part of the assignment as taking the test itself. It is a way to teach material again in a new context, and it helps show students how to assist and respect fellow pupils. By explaining the answers to the class as the students correct the papers, the teacher not only reinforces the lesson but also discovers whether the students have understood the material and are ready to move on. We do not think FERPA prohibits these educational techniques" Emphasis added (Owasso ISD No. I-011 v. Falvo, 2002, p. 7).

While it may appear that the Court is taking a very active role in discussing teaching and learning on the surface, the truth is quite different. Rather than supporting any particular instructional strategies, the Court is simply declaring that these activities are not in violation of FERPA. The Court, as it has acknowledged often in the past, does not claim pedagogical expertise and, as a result, would rather leave decisions regarding classroom instruction and assessment to teachers and administrators. In the end, the Court determined that peer-graded student work is not an educational record until it has been recorded in the teacher's grade book.

The "Alternative" Decision

Legal research must be conducted based on the decision of the court and the wording of the justices. As such, to ask the question of "what if" is often considered futile, irrational, or even dangerous. Nevertheless, given the ever-shifting and highly political nature of education policymaking during the past two decades, a brief consideration of how the "alternative" decision may have impacted schools might enlighten future policy decisions. Had the Court decided that peer-grading violated the intentions of FERPA, school administrators would have been given a powerful tool to use with teachers who employ their students for the scoring of student work. For example, a school principal would have been able to simply tell a teacher that was regularly having students exchange quizzes and tests for grading that this practice was against the law and must be discontinued. This could serve as a first step towards improving teaching and learning in the classrooms of these teachers, for peer-grading can only be used with simple recall, pencil and paper assessments. With this type of assessments, teachers can simply read the one correct answer to the students, who, in turn, score the paper. The same cannot be said of more complex, high-level, open-

ended assessments. Without a single correct answer for the teacher to call out, it becomes necessary for the teacher to score the work. Of course, there is no silver bullet to school change. Had the Court prevented the continued use of peer-grading, teachers may not have replaced this practice with a dramatic shift to the use of performance-based assessments, self-assessments, and portfolios, in which the evidence of a student's performance can be collected over time.

While there may be a great pedagogical difference between peer-grading and peer assessment, the "alternative" decision would have likely negated both as viable classroom strategies. Whereas peer grading involves having students score one another's work, peer assessment involves having students actually evaluate one another as part of a constructive process that is designed to teach students on both ends of the exchange. This type of activity not only helps students better learn content and skills as defined by standards, but it also enables students to learn and practice some of the real world collaboration skills that are necessary for success in the 21st Century workplace as well as to fulfill one's responsibilities as a participant in American society (SCANS, 1991; Klein, 1999). For example, an eighth grade class is completing a health and biology unit, and students have been assigned an individual project in which they have chosen what they believe is the greatest health risk to teenagers. Students have been required to research this health risk and develop a set of responses to it as well as prevention solutions. Students are then required to prepare a presentation in which they will share the information that they have researched regarding this health risk and their responses and solutions. Through this project, students are expected to meet certain health and science standards as well as a number of language arts standards. A peer assessment in this situation might involve requiring students to use the teacher-designed rubric to score one of their classmate's presentations and conference with that classmate following the presentation to share the perceived strengths and weaknesses of the presentation. In this setting, both students, the presenter and the evaluator, would benefit from a more detailed understanding of what a good presentation encompasses as well as what type of strategies one can use in the future to ensure that they are as well prepared as possible for a good presentation. This type of peer assessment is far different than having students peer-grade by checking whether a word is spelled correctly or incorrectly on a spelling test. Had the Court found that peer-grading violated FERPA's provisions, then peer assessment would have been a likely casualty of this decision as well.

The Implications of the Decision

As with any decision of the United States Supreme Court, the Owasso decision is fraught with long-term implications for public education, some of which will probably remain unforeseen for the near future. Among those that can be seen and directly impact teaching and learning at the classroom level is the fact that peer-grading can legally continue as it is not in violation of FERPA. While peer-grading may not provide as rich an educational experience as that to which the Court has alluded, this decision also implies that peer assessment, an important component of a comprehensive assessment plan, can continue to be implemented and refined in more and more classrooms as an instructional strategy that empowers students. There need not be fear on the part of teachers or administrators that high-level peer assessments will violate FERPA.

More important than this direct and explicit implication of the Owasso decision is that the Court has, again, demonstrated its reluctance to become intricately involved in issues of teaching and learning. Rather, the Court has

made a classroom-related decision at arm's length from the role of the teacher and the administrator so as not to infringe upon the space necessary for individuals in those positions to successfully accomplish their jobs. This line of thought is exemplified in the Sixth Circuit Court of Appeals' opinion in Settle v. Dickson County School Board, et al. "Federal courts should exercise particular restraint in classroom conflicts between student and teacher over matters falling within the ordinary authority of the teacher over curriculum and course content" (1995, p. 155). Not only did the majority opinion in this case support the notion that teachers and administrators must be given broad discretion by the courts to carry out their duties so long as there is no infringement of student rights, but the concurring opinion also supported this concept.

> "Implicit in the majority's opinion is the view that classroom teachers can make mistakes of judgment in determining how to teach, and these mistakes, so long as they are not based on impermissible criteria, do not give rise to claims of constitutional deprivations. I wholly agree. And on the facts of this case, that is all that needs to be said" (Settle v. Dickson County School Board, et al., 1995, p. 157).

In other words, "The bottom line is that when a teacher makes an assignment, even if she does it poorly, the student has no constitutional right to do something other than the assignment and receive credit for it" (Settle v. Dickson County School Board, et al., 1995, p. 158). Not only has the Sixth Circuit Court of Appeals supported the spectrum of decision-making powers enjoyed by public school teachers and administrators, but the United States Supreme Court has done so in a number of instances as well.

In the landmark Hazelwood case, the Court supported the decision of a high school principal to eliminate two pages of an edition of the school newspaper prior to its publication. The newspaper was produced as part of the school's journalism courses. In so doing, the Court stated, "This standard is consistent with our oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, not of federal judges" (Hazelwood School District v. Kuhlmeier, 1988, p. 273). Following this same pattern, thirteen years earlier, the Court stated, "It is not the rule of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion" (Wood v. Strickland, 1975, p. 326). The courts have clearly defined their own role in public education. They will decide broad, sweeping issues, but they will not manage educational affairs. "Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values" (Epperson v. Arkansas, 1968, p. 104). Peer-grading, and assessment of student performance more generally, provide concrete examples of a topic central to the daily operation of a school to which the Court speaks in Epperson. While student assessment is very important in educational terms, it is not, as the Court has acknowledged by its decision in Owasso, a basic constitutional value.

The Real Tools for Improvement

Since 1983, and particularly throughout the 1990's, education has maintained its position atop the domestic political agenda of the American public and among American politicians. In spite of its importance, issues related to curriculum, instruction, and assessment, are not, generally, the territory of the judicial system. The American judiciary has a long history of avoiding the delicate internal workings of school classrooms, and while the executive

and legislative branches of state and federal governments have the right and privilege of making policies which can impact teaching and learning, they may be wise to follow the judiciary's lead in avoiding such mandates. Why? Mandates have not been successful in significantly changing the underlying assumptions of teaching and learning in American public school classrooms (Sarason, 1990). This, then, begs the question: what meaningful impact can a president, Congress, a governor, or a state legislature have on school reform? The answer is that, unless these potentially powerful individuals begin to ask very different questions regarding public education and their role in it, they will probably continue to have very little impact. Substantial change is a long, arduous, and ongoing process that occurs at the local level and involves the range of critical stakeholders (Fullan, 1993). While the "alternative" decision in Owasso may have prevented teachers from having students grade one another's fill-in-the-blank and multiple choice tests, it would not, and it could not, have generated meaningful long-term changes that would engage more students and lead to higher levels of achievement.

What is the final result of the Owasso decision as it relates to student assessment over the long-term? The result is that this answer will come from each individual school. By finding that peer-grading does not violate FERPA, the Court has done nothing to upset the instructional status quo. At the same time, the Court has reiterated its long-standing support of the decisions of teachers and administrators on issues that are central to teaching and learning. As a result of this decision, some schools may continue choosing not to change, and they will not be forced to do so by the Court. For those schools that do seek change and improvement, it will occur under the leadership of the school principal, the individual who "merits the title of 'gatekeeper of change'" (Sarason, 1996, p. 77). This principal will need a complete set of tools in order to realize long-term and ongoing changes in the organization and practices of the school. Such changes will require the principal to truly create a learning organization, one in which all members of the organization are expected to continually seek out new ideas and reflect upon the results of their current practices in a highly collaborative setting (Senge, 1990). Leading a learning organization requires that the principal become the head learner of the organization. In other words, "teachers and students benefit when principals function as learning leaders rather than instructional leaders" (DuFour, 2002, p. 13). Once the principal is willing to risk being a learner rather than a knower, he or she can continuing working towards the goal of creating a school that will continually improve itself through its very structures and culture. If the principal hopes to diminish a reliance on peer grading in order to change and improve student assessment in the school, there is no legal imperative from which to base this change. Rather, the most lasting change will be the result of new learning among staff members who, then, realize the benefits of other practices. The literature suggests that effective schools are likely to change when the principal leads as a learner, but it is equally as important that he or she lead through collaborative structures (Rosenholtz, 1989; Glickman, 1998). By including others, such as teachers, parents, and even students, all members of the community not only have opportunities for their voices to be heard, but all share in the responsibility of the school's successes and its failures. When given the opportunity to truly impact the decision-making process, the efficacy of members of the school community will increase and so, too, will their motivation to perform and achieve at the highest possible level. Meaningful and substantial change to student assessment practices, as well as all other basic components of teaching and learning, cannot come from a mandate of any branch

of government. Rather, such change is the result of the effective use of these aforementioned tools of school leadership.

Since the onset of the Standards Movement, the understanding of what classroom assessment is and what it ought to be has grown dramatically. Owasso Independent School District No. I-011 v. Falvo presented a legal opportunity to accelerate the discussion of student assessment with many teachers and in many schools where student assessment continues to primarily consist of pencil and paper tests that feature questions requiring students to recall basic facts about a particular topic. While this type of assessment certainly has a place in a more comprehensive system of student assessment, such a system seeks to collect a variety of evidence that demonstrates the performance of a student over time on different tasks. With the Supreme Court's decision in Owasso, school leaders have not been given the opportunity to simply use the law as a blunt tool with which to accelerate change. Nevertheless, this decision is not without its benefits for school leaders. The Court has continued its pattern of demonstrating reluctance at making decisions related to the core technology of schools, teaching and learning. For schools and students, this means that the burden of shifting the focus of student assessment, along with all other aspects of public education, will continue to weigh on the shoulders of school administrators and teacher leaders. As the Court has demonstrated, these individuals are likely to have much greater fitness for carrying out this task than will nine justices seated in Washington, D.C. Nevertheless, school improvement is an exceedingly difficult task, and to be successful, it will require leaders who possess a unique and lucid vision as well as the skills and knowledge to realize this vision alongside other members in their school communities. In other words, the Supreme Court's decision did not prove to be a quick and easy tool for school improvement in the short-term, but the Court has continued to allow the real tools for school improvement to do their work, public school educators hammering away at school improvement in conjunction with students and parents.

The Court: A tool for school improvement?

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